

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6583 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AIYUB GANDO @ AIYUB HARISING RAJ (GARASIYA)

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/11/1999

ORAL JUDGEMENT

#. The petitioner came to be detained by an order passed by Commissioner of Police, Surat, under the Gujarat Prevention of Anti-Social Activities Act ("PASA Act" for short), on the ground that he is involved in criminal and anti-social activities, he falls within the definition of a 'dangerous person' as defined under the said Act and that criminal prosecutions are launched against him. The detaining authority recorded subjective

satisfaction about the petitioner being a dangerous person. The authority has also recorded subjective satisfaction about the detention being the only remedy for preventing the petitioner from engaging himself into such illegal and anti-social activities, resulting into disturbance in public order. The authority also satisfied itself that the witnesses, whose identity has not been disclosed, were, in fact, witnesses to the illegal activities of the petitioner resulting into disruption of public order and the authority, therefore, exercised the powers of claiming privilege under Section 9(2) of the said Act.

#. The petitioner has challenged the detention order by preferring this petition under Article 226 of the Constitution on various grounds, one of which being that the detaining authority has not considered and has applied its mind with regard to the provisions of Section 437(5) of the Code of Criminal Procedure for cancelling the bail of the petitioner. The aspect of lesser drastic remedy or alternative remedy, therefore, has not been considered in proper perspective and, therefore, the order suffers from the vice of non-application of mind.

#. Mr. Tirmizi, learned advocate representing the petitioner, while waiving other grounds, has emphasized the fact that the detaining authority while considering the less drastic remedy has not considered the possibility of getting the bail cancelled by approaching the appropriate Court under Section 437(5) of the Code of Criminal Procedure. He submitted that, in light of a Division Bench decision of this Court in the case of Zubedabibi Rasidkhan Pathan v. State of Gujarat & Ors., reported in 36(2) GLR 1134 and an unreported decision in the case of Yunusbhai Hasanbhai Ganchi v. District Magistrate in Letters Patent Appeal No.1056 of 1999 decided on 15th September, 1999 submitted that the petition may be allowed and the order in question may be quashed and set aside.

#. Mr. H.H. Patel, learned Assistant Government Pleader tried to oppose this petition and attempted to justify the detention on the ground that the subjective satisfaction recorded by the authority is well founded. Even if the detaining authority approached the Court for getting the bail cancelled, it would have consumed time and could not have prevented the petitioner from pursuing illegal his activities.

#. Keeping the rival side contentions in mind, the petition deserves to be allowed on the sole ground argued

by Mr. Tirmizi, in light of the above referred two decisions. The detaining authority ought to have considered and recorded the aspect of possibility of getting the bail cancelled and, thereafter, should have arrived at a satisfaction that lesser drastic remedy in the nature of cancellation of bail may be of no virtue and detention was the only remedy available. Mr. Patel was at loss to show either from the order or from the grounds of detention any consideration given to this aspect by the detaining authority. This being so, the detention order suffers from the vice of non-application of mind and, therefore, the same deserves to be quashed and set aside.

#. The petition is, therefore, allowed. The order of detention dated 8th February, 1999 passed by the detaining authority in respect of the petitioner-Aiyub Gando @ Aiyub Harising Raj (Garasiya) is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs. Direct service is permitted.

[A.L. DAVE, J.]

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